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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

Adv. Proceeding Nos. 08-01232, 08-01233

- - - - -x

In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

July 31, 2008

10:07 a.m.

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 DELPHI CORPORATION, ET AL. CHAPTER 11 CASE, 05-44481
2 MOTION for Order Authorizing and Approving Entry by Delphi
3 Automotive Systems LLC into Restructuring and Exchange
4 Agreement with Ener1, Inc. Related to Joint Venture

5
6 MOTION for Order, Solely as to Statutory Committees, Extending
7 Debtors' Exclusive Periods Within Which to File and Solicit
8 Acceptances of Reorganization Plan

9
10 DEBTORS' Thirtieth Omnibus Objection to Certain (A) Amended
11 Claims, (B) Equity Claims, (C) Untimely Insufficiently
12 Documented Claim, (D) Books and Records Claims, (E) Untimely
13 Claims, and (F) Claims Subject to Modification

14
15 DELPHI CORPORATION v. APPALOOSA MANAGEMENT, LP, ET AL., 08-
16 01232

17 MOTION of General Motors Corporation to Participate in
18 Adversary Proceeding as Party-in-Interest

19
20 DELPHI CORPORATION v. UBS SECURITIES LLC, 08-01233
21 MOTION of General Motors Corporation to Participate in
22 Adversary Proceeding as Party-in-Interest

23
24 Transcribed By: Esther Accardi
25

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1 P R O C E E D I N G S

2 THE COURT: Okay. Delphi Corporation.

3 MR. BUTLER: Your Honor, good morning. Jack Butler
4 and Kayalyn Marafioti for the debtors, with respect to the
5 debtors' thirty-third omnibus hearing for the month of July
6 2008, Your Honor.

7 We filed a proposed hearing agenda. There are five
8 matters on the agenda, and we'd like to take them in the order
9 of the agenda if that's all right?

10 THE COURT: Okay, that's fine.

11 MR. BUTLER: Your Honor, the first matter on the
12 agenda, which is uncontested, is the EnerDel joint venture
13 motion filed at docket number 13847. Your Honor, this is a
14 request for Your Honor to approve the debtors' business
15 judgment in entering into a restructuring and exchange
16 agreement with Ener1, Inc. for the restructuring and exchange
17 of DAS LLC's ownership interest in EnerDel, Inc., an existing
18 joint venture between DAS and Ener1.

19 This was a joint venture, Your Honor, that was put
20 together pursuant to a 2004 formation agreement. And the
21 purpose of the joint venture was to design and manufacture
22 lithium ion battery technologies and products.

23 The key part of the business judgment underlying this
24 transaction is a view of the company, the few of the debtors,
25 that we ought to take the opportunity to monetize and to

1 diversify the investment that we had in Ener1 -- excuse me, in
2 EnerDel, by essentially exchanging our investments in EnerDel
3 to investments in Ener1 and receiving \$8,000,000 in cash.

4 The reasons for this, among others, are that we are
5 dealing with a technology that we sold that was not core to the
6 business. The debtors want to monetize their investment in
7 that. We expect there to be additional cash calls and
8 investments at the joint venture level that the debtors do not
9 want to participate in and, therefore, there's a risk that the
10 investment would be diluted at the EnerDel level.

11 At the Ener1 level there's a more diversified
12 investment because there Ener1 has three businesses that the
13 investment would be covering.

14 And then, finally, the liquidity point, which is
15 important in addition to the \$8,000,000 in cash, which is about
16 a third, a little under a third of the investment.

17 The Ener1 stock is now trading on AMEX. And as our
18 papers indicate, it's trading at the moment, at least, at a
19 value higher than the valuation point upon which our business
20 judgment was based.

21 So those are the principal reasons, Your Honor, that
22 the company believes it makes sense to do this. I'm not going
23 to go into the detailed structure of the agreement unless Your
24 Honor has questions.

25 We have reviewed this with the creditors' committee

1 who I did some due diligence with respect to it and there are
2 no objections filed to the proposed transaction.

3 We did file exhibits with respect to this
4 transaction. There are nine of them, including a declaration
5 from Mr. Sheehan. And a fairness opinion that was prepared, I
6 point out, at the Ener -- for the joint venture as opposed to
7 the debtors. So we're not saying this is our fairness opinion,
8 but one was prepared by the joint venture. We did take it in
9 as a factor, but it's not something that we relied exclusively
10 on, which is Exhibit Number 8. But I would move, Your Honor,
11 admission of Exhibits 1 through 9.

12 THE COURT: Okay. Does anyone have any objection to
13 the admission of those exhibits into the record?

14 Okay, they're admitted.

15 (Debtors' Exhibits 1 through 9 were hereby received for
16 identification, as of this date.)

17 MR. BUTLER: Your Honor, unless you have questions, I
18 don't have anything else.

19 THE COURT: Well, two. I assume from the motion and
20 from what you said that this is consistent with the business
21 plan, to get out of non-core assets and the like?

22 MR. BUTLER: That's correct, Your Honor.

23 THE COURT: And, secondly, is DAS or another Delphi
24 entity providing services and know-how and research to Ener
25 still?

1 MR. BUTLER: I don't believe we're providing any
2 further technology.

3 THE COURT: Okay.

4 MR. BUTLER: We sold the technology is my
5 understanding.

6 THE COURT: All right. It's an investment at this
7 point?

8 MR. BUTLER: Yes, Your Honor.

9 THE COURT: If you're going to have some other
10 relationship it will be via contract?

11 MR. BUTLER: That's correct, Your Honor.

12 THE COURT: Okay. All right. Does anyone have
13 anything to say on this motion?

14 All right. Hearing no objections and having seen no
15 objections and having read the motion and the supporting
16 affidavit, I'll approve the motion as being within the debtors'
17 good business judgment.

18 MR. BUTLER: Thank you, Your Honor. Your Honor, the
19 next item on the agenda is the debtors' 1121(d) statutory
20 committee exclusivity extension motion, which would extend the
21 exclusive periods for the debtors to file a plan to October 31,
22 2008 in terms of the time to file modifications to a plan and a
23 solicitation period until December 31, 2008.

24 As Your Honor knows from the papers and from the
25 prior court record, we have dealt with exclusivity as to all

1 parties other than the statutory committees which have had a
2 shorter time period. There are no objections to the proposed
3 extension here.

4 As we move forward, we have said in the past that the
5 debtors are filing these motions out of an abundance of caution
6 because the debtors are relying under 1129(c) and the sections
7 of the plan and the confirmation order.

8 I would point out that there have been, during the
9 180-day period following the January 25, 2008 confirmation
10 order, there have been two complaints filed now for revocation
11 of the confirmation order. The parties filing those complaints
12 at the moment are negotiating with the debtors and don't intend
13 to prosecute those, although we're going to accept service of
14 the complaints, and I assume we'll enter into a stipulation to
15 toll the time to answer the complaints. But there's obviously
16 the potential that the Court will need to consider those 1144
17 complaints at some point in time.

18 So, in fact, these motions we're bringing before the
19 Court may be more than just out of an abundance of caution,
20 depending upon what might occur. So we have negotiated the
21 form of this exclusivity extension with our statutory
22 committees who support the extensions as we indicated.

23 Obviously, Your Honor, since April 4th, in addition
24 to operating our businesses and doing the various things we've
25 outlined in the papers in support of the exclusivity extension,

1 there are three major focuses that we've been involved in. We
2 have been focused on engaging in a reaffirmation process with
3 respect to the debtors' business plan through 2011, which
4 includes an analysis of the impact of, among other things, the
5 increases in global commodity costs and the reductions that
6 have occurred this year in the projections of North American
7 automotive industrial production volumes.

8 We've also been exploring our exit financing, our
9 possibilities in capital markets that remain turbulent and very
10 challenging, and are engaged on working on exit financing and
11 related matters.

12 And we've also been involved in negotiations with our
13 statutory committees and General Motors, among other
14 stakeholders, with respect to exploring possible modifications
15 to the plan that has been confirmed by this Court that would
16 enable Delphi to emerge from Chapter 11 as soon as practicable.

17 And we are doing that, obviously, to allow us to
18 focus on our business operations and to mitigate the damages
19 the debtors believe have been caused by the plan investors.
20 And, obviously, we have separately -- on a separate track have
21 commenced the litigation of the plan investors that is being
22 dealt with by special counsel.

23 And so we have been on this dual path that we've
24 described since April 4th to the Court. I think we are making,
25 as I've said before, measured progress on it. We're very

1 deeply involved in these discussions, and I think it's in the
2 interest of the estate, the debtors' interest in the estate,
3 for the Court to grant the relief that we're requesting.

4 THE COURT: Okay. Does anyone have anything to say
5 on this motion?

6 All right. I don't believe it's just a matter of an
7 excess of caution. In other words, I don't think it's a moot
8 motion, given the complaints to seek revocation of the plan,
9 and also based on my recollection of colloquy during the
10 confirmation hearing about the resolution of the concern about
11 not having a specific drop dead date for consummation in the
12 plan and the way that was left. So there's certainly a basis
13 for filing the motion and it addresses, really, just the two
14 committees. Neither committee has opposed the motion. So,
15 clearly, the motion states cause and I'll approve it.

16 MR. BUTLER: Thank you very much, Your Honor.

17 Your Honor, the next matter on the agenda is the
18 thirtieth omnibus claims objection filed at docket number
19 13823. This deals with 135 proofs of claim that were on the
20 objection. Thirteen of those we're not proceeding with today
21 because we either had responses filed as to twelve of those
22 objections, and we've had one objection that we've withdrawn
23 pending entry of a stipulation at the next claims hearing.

24 The twelve responses that were filed cover twelve
25 proofs of claims asserting liquidated claims of approximately

1 3.18 million dollars. And the objection that we're withdrawing
2 relates to proof of claim number 16807 filed by Georgia Power
3 Company. We've executed a joint stipulation with them to
4 expunge that claim. We'll be handing that stipulation up at
5 the next claims hearing. It's off of this omnibus objection.

6 That leaves, Your Honor, 122 claims that assert
7 liquidated claims of approximately 4.22 million dollars. We're
8 asking Your Honor to expunge 120 of these claims, with an
9 asserted claim amount of 3.57 million. And with respect to the
10 two other claims, relating to about \$650,000, we're only
11 seeking to modify the class of the claim.

12 We have provided Your Honor the particularized
13 notice, that has been the custom in these claims objection
14 processes, to the individual claim holders. And if Your Honor
15 grants the relief that we're seeking today we will serve
16 particularized notice of that relief as well.

17 THE COURT: Okay. Is anyone here in opposition to
18 this motion?

19 All right. As modified on the record, i.e., now that
20 the objection is dealing with the claims that are not objected
21 to -- claim objection, excuse me, where the claimant has not
22 objected to the objection, or in one case, where the claim has
23 been settled, I'll approve the omnibus objection based on the
24 lack of opposition as well as the averments in the objection
25 and the particularized notice under the claims procedures.

1 MR. BUTLER: Thank you, Your Honor. Your Honor, the
2 remaining two matters on the agenda relate to the plan investor
3 litigation.

4 Item number 4 on the docket is a motion to authorize
5 General Motors Corporation to participate in an adversary
6 proceeding number 08-01232, filed at docket number 64 of that
7 proceeding.

8 Number 5 on the agenda is a companion motion, dealing
9 with the other adversary proceeding, docket number 08-01233 and
10 it's filed at docket number 31 of that proceeding.

11 Your Honor, the debtors have not filed any opposition
12 of the relief requested. Mr. Friedman and Mr. Weintraub and
13 others are here on behalf of the debtors, to the extent the
14 debtors need to be involved in this. But there have been
15 objections filed by certain of the plan investors.

16 THE COURT: Okay.

17 MR. KESSLER: Good morning, Your Honor. Michael
18 Kessler from Weil, Gotshal & Manges for General Motors
19 Corporation.

20 As Mr. Butler introduced, this is General Motor's
21 motion to participate in the adversary proceedings filed by
22 Delphi against the plan investors, merely as a participant in
23 the proceedings and not as an intervener, to have the
24 permission to monitor or be an observer at all issues, or all
25 matters relating to these adversary cases, including discovery,

1 mediation, settlements, chambers conferences, etcetera.

2 Your Honor, we have a stipulation and order between
3 Delphi and General Motors, which, if approved by Your Honor,
4 will grant the motion with some amendments or revisions to the
5 proposed order.

6 The unsecured creditors' committee has agreed not to
7 oppose this stipulation and order. The equity committee did
8 not file any papers. And we did have opposition from the
9 various defendants. And in the courtroom before this hearing
10 we had some discussion, and I believe that we have resolved
11 their opposition, which I'd like to state on the record, and
12 then we could amend the stipulation and order and present it to
13 Your Honor a little later.

14 THE COURT: Okay.

15 MR. KESSLER: The objections amounted to essentially
16 the following: They did not want General Motors to appear at
17 mediations. They've now, as I understand it, consented to
18 General Motors appearing at the mediation as an observer with
19 the provision or the proviso or clarification that clearly Your
20 Honor's order permitting us to be at the mediation will not
21 override the mediator's rights to discuss matters individually
22 with parties and outside the hearing of other parties, which
23 we've consented to. If the mediator suggests, for example,
24 that he wants to talk to just Delphi and the plan investors and
25 leave other people out for the moment, obviously, we're not

1 asking that this order override that.

2 Second objection was to General Motors' participation
3 in settlement conferences. In our stipulation with Delphi
4 we've agreed that we only want permission to be present at
5 formal settlement conferences. And we've clarified that we
6 don't expect Delphi to conference us in to every telephone
7 conversation or invite us to every lunch meeting they have as
8 to which settlement is discussed. And I believe that the
9 defendants are now in agreement with that.

10 And the third issue I believe related to General
11 Motors signing onto the confidentiality agreement that the
12 other parties have signed on the case, and we've already agreed
13 to do that in the stipulation. So I believe that the
14 defendants will now agree to not oppose the stipulation, but
15 I'll allow them to speak for themselves.

16 MR. SHORE: Good morning, Your Honor. Chris Shore
17 from White & Case for Appaloosa and ADAH.

18 Just two clarifications, there have been some minor
19 textual changes that GM has agreed to which will conform into
20 the order and one further understanding.

21 Paragraph 9 of the proposed order would provide that
22 Delphi will not settle either of the adversary proceedings
23 without obtaining input in advance from GM. And it's our
24 understanding, in agreeing to this, that that does not mean
25 that Delphi needs to adopt any input from GM or change its

1 decision based upon input from GM, but that it will receive
2 input from GM before taking any action to settle.

3 THE COURT: Is that a correct understanding, Mr.
4 Butler?

5 MR. KESSLER: Yes, Your Honor.

6 THE COURT: GM doesn't have a contractual veto under
7 that language.

8 MR. KESSLER: I thought the stipulation was clear
9 that Delphi will consult with General Motors and General Motors
10 does not waive any rights that it may have to object to a
11 settlement if it wants to.

12 THE COURT: Okay. I appreciate the -- Mr. Shore,
13 were you speaking for the other four defendants who adopted
14 Appaloosa's objection?

15 MR. SHORE: I'm really just here for Appaloosa and
16 ADAH.

17 THE COURT: The two Appaloosa entities, all right.
18 Is anyone here on behalf of the other four objectors? No,
19 fine.

20 Before we go further, I haven't had the -- I haven't
21 seen the modified order. And I just want to make sure I
22 understand what GM is seeking at this point and what's been
23 agreed to other than the terms you've laid out which clearly
24 have been agreed to by the two Appaloosa defendants and the
25 debtor and without opposition by the two committees.

1 Is it clear now that, although its reserving its
2 rights including to intervene and anything else that's
3 reserved, GM is not going to be seeking to take discovery?

4 MR. KESSLER: Yes, Your Honor.

5 THE COURT: Rather all it wants is to participate in
6 discovery in the sense of sitting in, monitoring it?

7 MR. KESSLER: Yes, Your Honor. The essence of it is
8 that we would participate in all proceedings as an observer.
9 So with respect to discovery, we can come to the depositions.
10 We'll get copies of all the discovery produced documents,
11 etcetera. But we're not asking to ask questions. We're not
12 asking to propound our own discovery or anything of that sort,
13 subject to not waiving our right to seek to intervene at a
14 later date.

15 THE COURT: Okay.

16 MR. KESSLER: With respect to other aspects of the
17 litigation where we would be permitted to attend mediations, if
18 Your Honor takes the parties back into chambers, we would be
19 permitted to go there. But, again, in a nonspeaking role
20 unless someone asks us to speak. We won't file pleadings, we
21 don't plan to file pleadings.

22 THE COURT: Okay. So you can obviously whisper a
23 question into someone's ear but --

24 MR. KESSLER: Absolutely.

25 THE COURT: -- they have to make the decision of

1 whether they're going to ask it or not.

2 MR. KESSLER: Absolutely.

3 THE COURT: Or the same with making a point in a
4 brief or making a point at oral argument?

5 MR. KESSLER: Yes, Your Honor.

6 THE COURT: Okay. Right. Does anyone have anything
7 further to say on this motion?

8 I appreciate the context in which you presented it,
9 which is that it is unopposed by those parties who were
10 interested enough in it to appear at the hearing. The lack of
11 opposition, I guess, does not extend to the four non-Appaloosa
12 related parties to the adversary proceeding, each of whom filed
13 an objection to the motion that adopted ADAH and Appaloosa's
14 objection. But, again, they were not sufficiently interested
15 in those objections to appear at today's hearing or I guess to
16 continue to be up to speed with regard to the developments
17 involving changes to the proposed relief that were reflected on
18 the record.

19 So I will approve the motion as modified, or grant
20 the motion as modified, which I view to be largely, if not
21 entirely, on consent, as I just stated.

22 With regard to the other four objectors to the extent
23 they didn't hitch their wagon to whatever Appaloosa decided,
24 I'll overrule those objections based on the relief sought as
25 modified.

1 The Second Circuit in Caldor made it clear, as it
2 stated, that -- this is a quote, "that the phrase any issue in
3 a case in Section 1109(b) plainly grants a right to appear,"
4 I'm sorry, "to raise, appear and be heard on any issue,
5 regardless whether it arises in a contested matter or an
6 adversary proceeding." That's 303 F.3d 161, 169 (2nd Cir.
7 2002). What that holding left open was, as noted by Judge
8 Gerber in the Adelpia case, the extent of a party-in-
9 interest's rights in respect of any proceeding, whether it's an
10 adversary proceeding or a contested matter, but particularly,
11 an adversary proceeding. The objections highlighted aspects of
12 those issues but I believe that the agreed order now clearly
13 lies within the spectrum of permissibility as outlined by Judge
14 Gerber in the Adelpia case, which appears at 285 B.R. 848
15 (Bankr. S.D.N.Y. 2002) or the continuum, as he describes it, at
16 page 856 through 857.

17 The only other issue that I saw that was raised by
18 the objection is whether, in fact, to exercise 1109(b). In an
19 adversary proceeding one has to seek to intervene in a formal
20 motion pursuant to Bankruptcy Rule 7024.

21 I don't believe that Caldor requires that. I also
22 don't believe that the Iridium case requires it. All that
23 Iridium said is that in Caldor the Second Circuit stated that
24 if one wants to intervene, or to put it differently, if one
25 makes a motion to intervene, Caldor does not change the

1 requirements of Rule 24, both (a)(1) as a right which has its
2 limitations as stated in Iridium, and also (a)(2) if one didn't
3 have the right under 1109, that's Iridium India Telecom Ltd. v.
4 Motorola Inc., 165 Fed.S. 878 (2nd Cir. 2005).

5 So I view Caldor as saying that to somewhat undefined
6 extent, 1109 gives a party-in-interest a right to be heard in
7 an adversary proceeding even though they have not formally been
8 given leave to intervene. What that right extends to -- for
9 example, whether it extends to the right to take discovery, is
10 an interesting question. But that question is now not raised,
11 given the terms that GM has agreed to in connection with the
12 stipulated order. So I don't need to address the question at
13 this point.

14 So you can submit that order.

15 MR. KESSLER: Okay. Thank you, Your Honor.

16 We could do it one of two ways as Your Honor prefers.
17 We could mark it up in the courtroom and hand it up with the
18 disk or we can take it back to the office and make the
19 corrections.

20 THE COURT: Why don't you mark it up, because you
21 have Mr. Shore here and he can look it over.

22 MR. KESSLER: Okay. Thank you, Your Honor.

23 THE COURT: And you can just walk it down to
24 chambers.

25 MR. KESSLER: Thank you.

1 THE COURT: Okay.

2 MR. BUTLER: Thank you, Your Honor. That's all we
3 have on the agenda.

4 THE COURT: Okay. Before you all go, Mr. Friedman, I
5 just want to make sure I was clear on Monday. You shouldn't
6 wait to receive my review of my bench ruling before submitting
7 the order on the motions to dismiss; you can submit that order
8 before then. Because I gave such a lengthy bench ruling and
9 because I, in all likelihood, will attach a somewhat modified,
10 in terms of style not content, ruling to the order, you don't
11 need to put in a lot of findings or conclusions. You can just
12 say for the reasons stated in the Court's bench ruling. So
13 it's perfectly fine if you're circulating that order among the
14 parties to get their -- preferably to get their consent at
15 least to the form of the order. But you don't need to wait
16 until I go over the transcript in order to submit it.

17 MR. FRIEDMAN: I appreciate that, Your Honor. And we
18 actually prepared a form of order along the lines that Your
19 Honor is suggesting now yesterday and we circulated it to the
20 defendants.

21 We've received a couple of comments that we are
22 considering. And my hope and expectation is that we will
23 submit a proposed form of order to the Court this afternoon,
24 hopefully with agreement of the defendants. But if not, then
25 there will be some disagreement.

1 THE COURT: Okay. Fine, very well. Thank you.

2 (Proceedings concluded at 10:35 a.m.)

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I N D E X

E X H I B I T S

DEBTOR'S

ADMITTED

1 through 9

8

RULINGS

PAGE LINE

Motion for Order Authorizing and Approving
Entry By DAS LLC into Restructuring and
Exchange Agreement with Ener1 Granted

9 16

Motion for Order, Solely as to the Statutory
Committees, Extending Debtors' Exclusive
Periods Within Which to File and Solicit
Acceptances of Reorganization Plan Granted

12 15

Debtors' Thirtieth Omnibus Objection to
Certain Claims Granted

13 23

Motion of GM to Participate in Adversary
Proceeding as Party-in-Interest Granted
as Modified

19 19

C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a
true and accurate record of the proceedings.

ESTHER ACCARDI

Veritext LLC

200 Old Country Road

Suite 580

Mineola, New York 11501

Date: August 4, 2008